

AIR TRANSPORT SERVICES

*Agreement, with annexes and exchanges of notes, signed at Santiago
May 10, 1947*

Instruments of approval exchanged at Santiago December 30, 1948

Entered into force December 30, 1948

63 Stat. 3755; Treaties and Other
International Acts Series 1905

AIR TRANSPORT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CHILE

The President of the United States of America and the President of the Republic of Chile, having in mind:

The increasing importance and development which have evolved in commercial air navigation as well as the consideration that air transport has special characteristics and affords quick and certain communication between peoples; that it is the desire of both governments to organize international air services in orderly fashion, keeping in view the development of international cooperation in the field of air transportation; that both governments aspire to arrive at a general multilateral agreement which will govern all nations in the field of commercial aviation; that until such general agreement to which both governments have become parties is obtained, the two governments are disposed to draw up immediately a bilateral agreement on civil air transport.

For this purpose they have designated their Plenipotentiaries, to wit:

The President of the United States of America: His Excellency Mr. Claude G. Bowers, Ambassador of the United States of America.

The President of the Republic of Chile: His Excellency Mr. Raul Juliet, Minister of Foreign Affairs.

Who, after exhibiting their full powers and finding them to be in good and proper form, agree upon the following provisions:

ARTICLE I

Each of the contracting parties grants to the other contracting party the rights which are specified in the attached annexes for the purpose of establish-

ing the routes and international commercial air services described in the said annexes. These services may be inaugurated immediately or at a later date, at the option of the contracting party to whom these rights are granted.

ARTICLE II

Each of the air services described in the annexes may be placed in operation as soon as the contracting party to whom the right has been granted by Article I to designate one or more airlines of its nationality for the route in question has authorized an airline to serve such route. Said contracting party will be bound to give the appropriate operating permission to the airline or airlines concerned, subject to the terms of Article VI.

The designated company or companies may be required by the contracting party which grants the right to fulfill the conditions prescribed in the laws and regulations which normally govern the authorization of international air transport service before being permitted to engage in the operations contemplated by this agreement. It is understood, furthermore, that in areas of hostilities or of military occupation, or in areas affected thereby, the inauguration of such services will be subject to the approval of the appropriate military authorities.

ARTICLE III

In order to prevent discriminatory practices and to assure equality of treatment, both contracting parties agree that :

(a) Each of the contracting parties may impose or permit to be imposed just and reasonable charges for the use of public airports and other facilities under its control. Each of the contracting parties agrees, however, that these charges shall not be higher than would be paid for the use of such airports and facilities by its national aircraft engaged in similar international services.

(b) The fuel, lubricating oils, and spare parts brought into the territory of one of the contracting parties by the other contracting party or its nationals for the exclusive use of the aircraft of the airlines of said contracting party shall receive, with respect to customs duties, inspection fees or other national duties or charges by the contracting party in whose territory they have entered, the same treatment as that applicable to the national airlines engaged in international transport and to the airlines of the most-favored-nation.

(c) The fuel, lubricating oils, spare parts, regular equipment, and aircraft stores retained on board civil aircraft of the airlines of one contracting party authorized to operate the routes and services described in the annexes shall be, upon arriving in or leaving the territory of the other contracting party, exempt from customs, inspection fees, or similar duties or charges, even though such supplies be used or consumed by such aircraft on flights in that territory.

ARTICLE IV

Certificates of airworthiness, certificates of competency and licenses issued or rendered valid by one contracting party and still in force shall be recognized as valid by the other contracting party for the purpose of operating the routes and services described in the Annexes. Each contracting party reserves the right, however, to refuse to recognize, for the purpose of flight above its own territory, certificates of competency and licenses granted to its own nationals by another State.

ARTICLE V

(a) The laws and regulations of one contracting party relating to the admission to or to departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, shall be applied to the aircraft of the designated airlines of the other contracting party upon entering or departing from or while within the territory of the first party.

(b) The laws and regulations of one contracting party as to the admission to or departure from its territory of passengers, crew, or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with by or on behalf of such passengers, crew or cargo of the airlines designated by the other contracting party upon entrance into or departure from, or while within the territory of the first party.

ARTICLE VI

Each contracting party reserves the right to withhold or revoke the certificate or permit of an airline designated by the other contracting party: (a) in the event it is not satisfied that substantial ownership and effective control of such airlines are vested in nationals of the other contracting party; (b) or when the airline designated by the other contracting party fails to comply with the laws and regulations of the contracting party over whose territory it operates, in the manner established in Article V of this agreement; or (c) when said line otherwise fails to comply with the conditions under which the rights are granted in accordance with this agreement and its annexes.

ARTICLE VII

This agreement and all contracts connected therewith will be registered with the International Civil Aviation Organization (ICAO).

ARTICLE VIII

Existing rights and privileges relating to air transport services which may have been granted previously by either of the contracting parties to an air-

line of the other contracting party shall continue in force according to their terms and subject to the stipulations of this agreement.

ARTICLE IX

This agreement or any of the rights for air transport services granted thereunder may be terminated by either contracting party upon giving one year's prior notice to the other contracting party.

If a general multilateral aviation convention, accepted by both contracting parties, enters into effect, this agreement shall be modified in such a way so that its provisions will conform to those of the convention under reference.

ARTICLE X

In the event either of the contracting parties considers it desirable to modify the routes or conditions set forth in this agreement, it may request consultation between the competent authorities of both contracting parties, such consultation to begin within a period of sixty (60) days from the date of the request. When these authorities mutually agree on new or revised conditions affecting this agreement, their recommendations regarding the matter with respect to Annex B will enter into effect after having been confirmed by an exchange of diplomatic notes, and their recommendations with respect to the balance of the agreement will enter into effect once they have been approved in conformity with the constitutional laws of the respective contracting party.

ARTICLE XI

Any dispute between the contracting parties relative to the interpretation or application of this agreement, or its annexes, which cannot be settled through consultation shall be submitted for an advisory report to the Council of the International Civil Aviation Organization, unless the contracting parties agree to submit the dispute for an arbitral decision by the same organization, or to some other organization designated by common agreement between the same contracting parties, these alternatives being subject to the constitutional provisions governing each country. The executive authorities of each of the contracting parties will use their best efforts under the powers available to them to put into effect the opinion expressed in any such report.

ARTICLE XII

This agreement will be approved by each contracting party in accordance with its own law and shall enter into force upon an exchange of the respective instruments of the two contracting parties indicating such approval. Both contracting parties shall undertake to make effective the provisions of this agreement, within their respective administrative powers, from the date on which it is signed.

In witness whereof, the undersigned Plenipotentiaries, being duly authorized by their respective governments, have signed the present agreement in duplicate in the English and Spanish languages, each of which shall be of equal authenticity.

Done at Santiago this 10th day of May, 1947.

For the Government of the United States of America:

CLAUDE G. BOWERS [SEAL]

For the Government of the Republic of Chile:

R. JULIET [SEAL]

ANNEX "A"

The high contracting parties agree upon the following:

A) The airlines of the two contracting parties operating on the routes described in Annex "B" of this agreement shall enjoy fair and equal opportunity for the operation of services on the said route.

B) The air transport capacity offered by the airlines of both countries should be closely related to traffic requirements.

C) In the operation of common sections of trunk routes, established in Annex "B" of this agreement, the airlines of the contracting parties should take into account their reciprocal interests so as not to affect unduly their respective services.

D) The services provided by an airline designated under this agreement and its annexes shall retain as their primary objective the provision of capacity adequate to the traffic demand between the country (or points under its jurisdiction) of which such airline is a national and the country of ultimate destination of the traffic.

E) The right to embark and to disembark at points under the jurisdiction of the other country passengers, cargo, and mail destined for or coming from third countries shall be applied in accordance with the general principles of orderly development. Both governments agree that traffic capacity shall be related to:

1) The traffic requirements between the country of origin (or points under its jurisdiction) and the countries of destination;

2) The requirements of through airline operation; and

3) The traffic requirements of the zone through which the airline passes, taking previously into account the requirements of local or regional services.

F) The appropriate aeronautical authorities of each of the contracting parties may consult from time to time, or at the request of one of the parties, to determine the extent to which the principles set forth in this Annex are being followed by the airlines designated by the contracting parties. When these authorities agree on further measures necessary to give these principles

practical application, the executive authorities of each of the contracting parties will use their best efforts under the powers available to them to put such measures into effect.

G) Each contracting party may, subject to the provisions of this agreement, designate the routes to be followed within its territory by the airline or airlines of the other contracting party. The airline or airlines of either contracting party shall, if the regulations of the other contracting party so require, land at an airport designated by that contracting party for the purpose of customs and other examinations. On departure from the territory of a contracting party, such aircraft shall, if that party so requires, depart from a similarly designated customs airport.

H) a. The determination of rates in accordance with the following paragraphs shall be made at reasonable levels, due regard being paid to all relevant factors, such as cost of operation, reasonable profit, and the rates charged by any other airline, as well as the characteristics of each service (such as speed and comfort).

b. The rates to be charged by the airlines of either contracting party between points in the territory of the United States and points in Chilean territory on the routes described in Annex "B" shall, consistent with the provisions of the present Agreement and its Annexes, be subject to the prior approval of the aeronautical authorities of the contracting parties, who shall act in accordance with their obligations under the present Annex, within the limits of their legal powers.

c. Any rate proposed by the airline or airlines of either contracting party to be in effect on the routes described in Annex "B" shall be filed with the aeronautical authorities of both contracting parties at least thirty (30) days before the proposed date of introduction; provided that this period of thirty (30) days may be reduced in particular cases if so agreed by the aeronautical authorities of both contracting parties.

d. The Civil Aeronautics Board of the United States having approved the traffic conference machinery of the International Air Transport Association, for a period of one year beginning in February 1947, any rate agreements concluded through this machinery during this period and involving United States air carriers will be subject to approval of the Board. Rate agreements concluded through this machinery may also be required to be subject to the approval of the aeronautical authorities of the Republic of Chile pursuant to the principles enunciated in paragraph (b) above.

e. When the aeronautical authorities of the two contracting parties cannot agree within a reasonable time upon the appropriate rate after consultation initiated by the complaint of one contracting party concerning the rate, they shall follow the procedure prescribed in Article XI of the Agreement.

I) On each of the routes described in Annex "B", the authorized airline or airlines may operate non-stop flights between any of the points on such

route omitting stops at one or more of the other points on such route, without prejudice to the principles established in Article X of this Agreement.

J) a. Every change of gauge justifiable for reasons of economy of operation, shall be permitted on any stop of the established routes.

b. Nevertheless, no change of gauge may be made in the territory of one or the other contracting parties when it modifies the characteristics of the operation of a through airline service or if it is incompatible with the principles enunciated in the present Agreement and its Annexes.

K) Changes made by either contracting party in the routes described in Annex "B" except those which change the points served by these airlines in the territory of the other contracting party, shall not be considered as modifications of the Annex. The aeronautical authorities of either contracting party may therefore proceed unilaterally to make such changes, provided, however, that notice of any change is given without delay to the aeronautical authorities of the other contracting party.

If such other aeronautical authorities find that, having regard to the principles set forth in this Annex, interests of the airline or airlines of their nationality are prejudiced by the carriage by the airline or airlines of the first contracting party of traffic between the territory of the second contracting party and the new point in the territory of the third country, the authorities of the two contracting parties shall consult with a view to arriving at a satisfactory agreement.

CLAUDE G. BOWERS
R. JULIET

ANNEX "B"

A) Airlines of the United States of America, authorized under the present Agreement, are accorded rights of transit and non-traffic stop in the territory of the Republic of Chile, as well as the right to pick up and discharge international traffic in passengers, cargo, and mail on the following routes via intermediate points in both directions:

B) The United States and/or the Canal Zone to Arica, Antofagasta, and to Santiago and beyond Chile (a) from Arica to points in Bolivia and beyond, (b) from Antofagasta to points in Argentina and beyond, and (c) from Santiago to points in Argentina and beyond.

C) Airlines of the Republic of Chile authorized under the present Agreement are accorded rights of transit and non-traffic stop in the territory of the United States of America and points under its jurisdiction, as well as the right to pick up and discharge international traffic in passengers, cargo, and mail on the following routes via intermediate points in both directions:

D) From Chile to Miami and/or New York and beyond the United States of America.

CLAUDE G. BOWERS
R. JULIET

EXCHANGE OF NOTES

The American Ambassador to the Minister of Foreign Affairs

AMERICAN EMBASSY
Santiago, May 10, 1947

No. 115

EXCELLENCY:

I have the honor to present herewith a statement of the understanding upon which the government of the United States proposes to execute the Air Transport Agreement entered into with the government of Chile.

1. A unique situation exists concerning the Panama Canal Zone by reason of the relationship between the United States of America and the Panama Canal Zone arising out of certain treaties between the Republic of Panama and the United States of America. Pan American Grace Airways at present operates certain air services which originate in the Canal Zone. It is contemplated that, should an airport suitable for international airline operations be completed in the Republic of Panama, Pan American Grace Airways might transfer its base of operations to such an airport in the Republic of Panama, provided, of course, that the Republic of Panama should accede thereto. It is understood that such an operation by that air carrier of the United States of America which would originate its services in the Republic of Panama would exist because of the unique situation concerning the Canal Zone referred to above; and, because of the highly unusual situation involved therein, the Government of the Republic of Chile would consider that that designated airline of the United States of America might originate its operations at such time and under such circumstances from a point in the Republic of Panama.

The Government of Chile understands that, since Pan American Grace Airways Inc. is 50 percent owned by, and is therefore a part of, the Pan American World Airways system and, furthermore, has been operating under the terms of a contract between the company and the Government of Chile between the Canal Zone and Chile for the past eighteen years, the United States' routes authorized in Annex "B" are expected to be operated as a through airline operation between the United States and Chile. The Government of Chile, therefore, does not regard the fact that Pan American Grace Airways Inc. may be technically originating its services from an airport in the Republic of Panama as establishing a precedent since, as indicated above, by reason of Pan American Grace Airways' close affiliation with the Pan American Airways system and the fact that Pan American Grace Airways Inc. has been operating its present routes for many years with a close connection in the Canal Zone with the Pan American World Airways system, the bulk of the originating traffic on these routes will continue, as in the past, to originate in the United States.

Until such time as an airport in the Republic of Panama suitable for international air transport operations is completed, airlines designated by the

Republic of Chile may serve the Republic of Panama from Allbrook Field in the Canal Zone, subject to the military requirements referred to in Article 2 of this Agreement.

With reference thereto, the Government of the United States of America has called attention to its Air Commerce Act of 1926 as amended by its Civil Aeronautics Act of 1938¹ which precludes the carriage by foreign aircraft of traffic between the Canal Zone and points in the United States and the authorization of Chilean airlines hereby expressed is accordingly subject to the limitation established by the above referred to legislation.

2. Although the Chilean routes to the United States as described in Annex B of the Agreement do not include a route to San Francisco, California, and beyond, as desired by the government of Chile, since it is not believed that such a route is presently justified economically, it is understood that Chile has a predominant interest in the Pacific and that, in view of this consideration, and when surrounding circumstances concerning possible future routes have sufficiently developed, each government contemplates requesting the other government for consultation (pursuant to the Agreement) regarding a modification of Annex B to include the desired West Coast routes, as well as other routes if traffic potentialities justify their consideration.

3. In connection with the provisions of paragraph I of Annex A, it is understood that each contracting party will notify the other contracting party, as soon as practicable, whenever it receives notice of intent of one of its designated airlines to suspend service to a point or between points in the territory of the other contracting party, in order that the latter contracting party may have the opportunity to request consultation with respect to the proposed suspension if it considers that such proposed suspension may be prejudicial to its interests, provided that nothing herein stated shall prejudice the right of the contracting party operating the service concerned to suspend service within 30 days after notice of intention to suspend has been given to the other contracting party.

4. It is understood that the Government of Chile interprets the local and regional services referred to in paragraph E 3 of Annex A to mean those services which unite two or more points between neighboring and contiguous countries. The Government of the United States, although it recognizes the possibility that this definition may prove to be the correct one, is not in a position to express its agreement with it at the present time.

5. It is understood that the Government of Chile, if it elects to designate entry and exit customs airports, as provided for in paragraph G of Annex A, will designate these airports in such a manner as to permit the United States routes described in Annex B, and any other United States routes which may later be approved by the Government of Chile, to be operated without operational disadvantage to the United States airline or airlines designated to fly

¹ 44 Stat. 568 and 52 Stat. 973.

such routes. For example, on a service entering Chile at Arica and proceeding to points in Bolivia and beyond, the customs airport which Chile would designate for original entry would be Arica and the same airport would be designated as the customs airport of departure; on a service entering Chile at Antofagasta and proceeding to points in Argentina and beyond, the customs airport for both entry and departure would be Antofagasta; on a service entering Chile at Antofagasta and proceeding to Santiago and thence to points in Argentina and beyond, the customs airport of original entry would be Antofagasta and the customs airport of departure would be Santiago.

6. With reference to Article II, it is understood by both contracting parties that the operating schedules of a designated airline or airlines will be regular and approved by the Aeronautical Authorities of both contracting parties. However, the provisions of Annex A shall govern the frequencies of schedules operated.

CLAUDE G. BOWERS

His Excellency

Señor don RAÚL JULIET G.

*Minister for Foreign Affairs
Santiago*

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

REPUBLIC OF CHILE
MINISTRY
OF FOREIGN RELATIONS
No. 004996

SANTIAGO, May 10, 1947

MR. AMBASSADOR:

I have the honor to submit to Your Excellency the present declaration as an interpretation of the manner in which the Government of Chile proposes to execute the Air Transport Agreement entered into with the Government of the United States.

[For statement of understanding, see numbered paragraphs in U.S. note, above.]

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

R. JULIET

His Excellency

CLAUDE G. BOWERS,

*Ambassador Extraordinary and Plenipotentiary of the
United States of America,
Santiago.*

The American Ambassador to the Minister of Foreign Affairs

AMERICAN EMBASSY

SANTIAGO, May 10, 1947

No. 116

EXCELLENCY:

I have the honor to state to Your Excellency that the air transport agreement between the Government of Chile and the Government of the United States of America, signed on this day, will be approved by each Contracting Party in accordance with its own laws and shall enter into force upon an exchange of the respective instruments of the two Contracting Parties indicating such approval. Both Contracting Parties will undertake to make effective the provisions of this agreement, within their respective administrative powers, from the date on which it is signed.

Accept, Excellency, the renewed assurances of my highest and most distinguished consideration.

CLAUDE G. BOWERS

His Excellency

Señor don RAÚL JULIET G.

*Minister for Foreign Affairs of Chile
Santiago*

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

REPUBLIC OF CHILE
MINISTRY
OF FOREIGN RELATIONS

No. 004995

SANTIAGO, May 10, 1947

MR. AMBASSADOR:

I have the honor to inform Your Excellency that the Air Transport Agreement between the Government of Chile and the Government of the United States of America, signed on this day, will be approved by each Contracting Party in accordance with its own laws and shall enter into force upon the exchange of the respective instruments of the two Contracting Parties indicating such approval. The two Contracting Parties will undertake to make the provisions of this Agreement effective, beginning with this date, within their respective administrative powers.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

R. JULIET

His Excellency CLAUDE G. BOWERS,

*Ambassador Extraordinary and Plenipotentiary of the
United States of America,
Santiago.*